

NOTICE

Decision filed 01/02/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 130176-U

NO. 5-13-0176

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

KATHLEEN S. STIPE,
Plaintiff-Appellant,

v.

JAMES BROADWAY, Building Inspector City of
Madison, Illinois, and CORPORATE AUTHORITIES
OF THE CITY OF MADISON, ILLINOIS,
Defendants-Appellees.

) Appeal from the
) Circuit Court of
) Madison County.
)
) No. 12-MR-170
)
)
) Honorable
) Barbara L. Crowder,
) Judge, presiding.

JUSTICE WEXSTTEN delivered the judgment of the court.
Presiding Justice Welch and Justice Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* Where the plaintiff-appellant argues on appeal that the trial court erred in entering an order of demolition, but she failed to provide this court with a transcript of the trial at which the pertinent evidence was adduced, this court must presume that the trial court acted and ruled properly.

¶ 2 Pursuant to section 11-31-1 of the Illinois Municipal Code (Municipal Code) (65 ILCS 5/11-31-1 (West 2012)), the circuit court entered an order of demolition. The order allowed the City of Madison, Illinois, a municipal corporation (hereinafter, the City), to demolish a building owned by Kathleen S. Stipe, who now appeals from that order. Essentially, Stipe argues that the City failed to provide her with proper notice under the Municipal Code and that the evidence does not support the order of demolition. However, Stipe did not present this court with a transcript of the trial, or with a bystander's report or an agreed statement of facts. Because of this deficiency, this court has no way of truly

evaluating the circuit court's findings and must presume that the circuit court acted and ruled properly. The judgment of the circuit court must be affirmed.

¶ 3

BACKGROUND

¶ 4 On or about June 15, 2012, the City, through its building inspector, James Broadway, posted a notice on the front of the house at 1620 3rd Street in Madison. The notice stated that the house was "open and vacant" and constituted "an immediate hazard." The notice also stated that unless the house was "demolished, repaired or enclosed," the City would demolish it. On June 18, 2012, Stipe learned of the City's action. On July 9, 2012, Stipe filed in the circuit court of Madison County an "objection to notice of violation", wherein she expressed an intention to repair the house and asked the court to enjoin the City from demolishing it. The court issued a temporary restraining order enjoining the City from demolishing the house.

¶ 5 On December 12, 2012, a nonjury trial was held. The court took the matter under advisement.

¶ 6 With leave of court, Stipe filed a written closing argument. In her argument, Stipe discussed the trial testimony of Broadway and of a Charles Chartrand. She argued that the City had failed to comply with the notice requirements of section 11-31-1(e) of the Municipal Code and that the City had begun demolition before obtaining court authorization. She asked that the court (1) deny the City authorization to demolish the house, (2) award "damages for the illegal demolition to her property in an amount that will bring the dwelling back to habitable status," and (3) "punitive damages for extreme emotional distress."

¶ 7 Also with leave of court, the City and Broadway jointly filed a written closing argument. In it, they discussed Stipe's trial testimony, Broadway's trial testimony, and other evidence presented at the trial. They wrote that Stipe had "acknowledged" a few points that

they were trying to establish, including the point that the property was open and accessible in December 2012. They asked that the court authorize the City to demolish the house and deny Stipe any relief.

¶ 8 Stipe filed "petitioner's response to respondent's closing remarks", wherein she stated that the closing remarks by the City and Broadway were "full of errors." Stipe discussed various points on which the City and Broadway allegedly mischaracterized her trial testimony or misrepresented other trial evidence. Stipe also stated that the City and Broadway had failed to follow statutory procedures governing the demolition of property and had failed to give her the notice required by statute. Stipe asked the court to dismiss the petition to demolish "as [she] has enclosed the property according to statute," and requested damages and court costs.

¶ 9 In a four-page order entered on March 6, 2013, the circuit court reviewed the procedural history of the case and reviewed the trial testimony and other evidence concerning the condition of the house and the expenditures that would be necessary to rehabilitate it. The court found that "the property is hazardous, dangerous, unsafe and uninhabitable. The property is beyond reasonable repair and a realistic plan for remediation was not and, frankly, cannot be produced." In regard to the issue of notice, the court wrote: the City posted a "Notice to Demolish" on the building on or about June 15, 2012; Stipe testified that she "learned of the City's actions" on June 18, 2012; and Stipe did not establish that she suffered any prejudice from any failure to notify her properly of the proposed demolition. The court ordered that the City could proceed with demolition, and it denied Stipe's claim for damages.

¶ 10 Stipe filed a notice of appeal from the order of demolition. At the same time, she filed a motion to stay enforcement of the order, pending appeal. On May 10, 2013, the court, with the agreement of the City and Broadway, granted a stay.

¶ 11

ANALYSIS

¶ 12 As appellant, Stipe makes four arguments to this court: (1) the City failed to provide notice of demolition to all owners of record, (2) the City's actions constituted wrongful demolition, (3) the circuit court erred in authorizing the demolition, and (4) she was entitled to damages for a wrongful and premature demolition. The City and Broadway disagree, arguing that the trial evidence supports the circuit court's order of demolition.

¶ 13 Apparently, the circuit court heard testimony on these points at the trial held on December 12, 2012. As previously mentioned, though, the record does not include a transcript of the trial. This deficiency is fatal to Stipe's appeal.

¶ 14 Supreme Court Rule 323 (eff. Dec. 13, 2005) mandates that the record on appeal contain a report of the trial-court proceedings, which includes a transcript, or, if no transcript is available, a bystander's report or an agreed statement of facts. The appellant has the burden of providing a complete record. *People v. Robinson*, 2013 IL App (2d) 120087,

¶ 16. Here, the plaintiff as appellant had the burden of providing this court with a transcript of the trial, or an appropriate alternative. She failed to meet that burden; neither a transcript nor an alternative has been provided. Where the appellant fails to include in the record on appeal some component that is key to his or her argument, the absence of that component supports a decision adverse to the appellant on that issue. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). See also *People v. James*, 337 Ill. App. 3d 532, 533 (2003) (when the record on appeal is incomplete, a reviewing court "must construe any omission in favor of the judgment rendered by the court below").

¶ 15 Before entering an order of demolition under section 11-31-1 of the Municipal Code, the circuit court must find that the building (1) is dangerous and unsafe, and (2) is beyond reasonable repair. *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 131 (2004). Both findings are necessary to support an order of demolition. On appeal, an order of demolition

will be reversed only if it is against the manifest weight of the evidence. *Id.* "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence." *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995).

¶ 16 Given the slim record on appeal, this court has no way of knowing exactly what evidence was adduced at the trial, and therefore cannot truly evaluate the circuit court's findings. In order to conduct a thoroughgoing review of the judgment in this case, and truly evaluate the court's findings, this court would need to examine a transcript of the trial, or a bystander's report or an agreed statement of facts. Absent a transcript or a suitable substitute, this court must presume that the circuit court acted and ruled correctly, and that its findings were not against the manifest weight of the evidence.

¶ 17 Finally, this court notes that Stipe did file in this court a motion for an extension of time in which to file a trial transcript. However, she did not file that motion until after she filed an appellant's brief and after the City and Broadway filed an appellee's brief. Due to the belated filing of the motion, this court denied the motion.

¶ 18 Given the state of the record on appeal, this court has no permissible choice except to affirm the judgment of the circuit court.

¶ 19 Affirmed.